No. 86.

Brf. of Valentine for Respondent.

Filed Nov. 10, 1899.

In the Supreme Court of the United States

ELLIS H. ROBERTS, Treasurer of the United States,
Petitioner,

vs.

THE UNITED STATES EX REL. MARIE A. VALENTINE.

BRIEF FOR RELATOR.

The writ is to review the action of the Supreme Court of the District of Columbia, which directed the U. S. Treasurer to perform a ministerial duty under an Act of Congress, providing that certain interest should be calculated and paid by said Treasurer, on claims of which the principal had been paid.

Statement of Facts.

There was no controversy as to any of the facts alleged by the relator in her petition for a mandamus. The Court below, after so stating, proceeds to give a résumé of those facts, which is so concisely done that such recital (pp. 15–17) is referred to by the appellee, without repeating it, as the facts on which this Court is asked to make its decision.

New Objections Cannot Be Raised in the Appellate Court.

I. It will be observed that the grounds now urged by the appellant for the interference of this Court were never suggested by him as his reasons for refusal to pay the interest when he wrote his refusal to the relator (p. 9), nor were any such grounds assigned in his answer filed in court to the petition for mandamus (p. 10). He stood in each instance solely on the legal proposition that as he had not issued bonds in the place of the certificates, but had paid in cash the judgment recovered on the certificates, he had not redeemed them, and had "therefore no authority to pay the additional interest." He can not raise new questions in the Appellate Courts for the first time.

There Was Never Any Question as to Ownership of the Claims.

II. The treasurer well knew that the relator (who acted by the attorney who had prosecuted the proceedings from the beginning in the Court of Claims) was the owner of all the interest by virtue of due assignment. The Court below say: "Had his denial of payment been founded on the insufficiency thereof, after "due inquiry, the writ of mandamus would not lie. "Had that objection been set up, the relator might "have satisfied it by supplementary proofs or else by "proceedings at law for the establishment of her claim "as against Evans and immediate assignees; but it "was not raised, either directly or by implication, in "the written statement of the grounds upon which "payment was refused. Nor does the return of the "defendant to the order to show cause deny the genuineness or regularity of the relator's claim as assignee; hence, it must be regarded as admitted" (p. 18).

The Record Does Not Show Title in Any Other than Relator.

III. The suggestion that because the treasurer's receipt drawn September 12, 1890 (p. 12), on the expiration of the three months, from judgment June 12, 1890, (the time allowed for appeal) bears a date earlier than the assignment by Fisher's executors, therefore the executors were the owners at the time of payment, is far-fetched. The original warrants in payment of Court of Claims judgment had to be drawn in the name of the judgment creditors. The latter, by their assignment (p. 8), gave a "power of attorney irrevocable to collect and receive the same in our names or otherwise." So that even the original warrants receipted for by the attorney of record (p. 12) went to the assignee, who had power to endorse and collect them, as their owner at the time of their redemption by honoring of the warrants. The petition duly alleges "that "prior to the payment of the amount" all the claims assigned to Fisher were duly assigned to relator (p. 6, XX.).

The certificates were duly presented for redemption.

IV. To the suggestion of appellant that the certificates must not be considered as redeemed, because the petition does not allege they were presented for payment within one year from the date of the approval of the Act of July 5, 1884, the answer is :

Not only does the petition allege the presentation by saying the certificates were presented and remained *presend* with the treasurer from August 1st, 1874, to June 9th, 1890 (p. 3, VII.), and demand for their redemption made both before and after January, 1881, but the judgment rendered for their amounts and paid by the treasurer is a conclusive adjudication that they were duly presented.

It is frivolous to say the judgments do not show on what claim they were rendered. Judgment means the whole judgment roll, including the petition (set forth at p. 5, XVIII.). The paper set forth at page 12 is only part of the judgment—to wit, the *postea*.

The duty of the treasurer was purely ministerial and subject to mandamus.

V. There was no interference by the Court with any discretion vested in the treasurer. If the defendant had based his refusal to pay upon any dispute of the facts alleged by the relator, the Court might well have postponed the writ until the issue was decided elsewhere; but, as on all the facts in the petition being laid before him (p. 6, XXII.), he based his refusal solely on want of authority to pay; and, as "his duty was so plain in its terms as to admit for no room for construction" (p. 20), his answer was rightly overruled by the Court below.

The Court of Appeals' judgment in no wise criticises the issue of the writ.

VI. There is no foundation whatever for the pretense that the "certificates" are outstanding. They were surrendered when the judgments were entered in the Court of Claims, and, as said by the Court (p. 20), "are presumably on file there." They are merged in the judgment. Because the Court below, in answer to the defendant's *ex parte* request, says, "*if* these certificates were not surrendered in procuring the judgments upon them it is but just that the judgment in this case should be so amended as to require their surrender to the defendant as a condition precedent to the *execution* of the writ," it is no criticism on the action of the Court below in ordering the writ to issue, but it merely points out to the defendant his remedy if he can prove the certificates were not surrendered.

The Court of Appeals did not direct the judgment to be amended, but merely gave "*leave* to defendant to apply to amend, *if need be*" (p. 21). The relief sug-

gested in no wise affected the *issuing of the writ* as ordered, but merely its *execution* (p. 20).

VII. The writ should be dismissed and judgment affirmed with costs and interest, and in view of the unjustifiable delay which has been caused to the relator, for which compensation can in no other way be given, ten per cent. damages, under Rule 23, should be awarded.

B. E. VALENTINE,
Attorney for Relator.

His decision was not one made in the exercise of his ordinary official duties, but as a refusal to perform a merely ministerial duty imposed by a special statute; in other words, it was precisely the case herein this Court has said (Dunlap V. Black 28 U.S. 40) a mandamus may issue.